

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* SAWINSKI/MASCARETTI, Minors.

UNPUBLISHED  
May 24, 2016

No. 329575  
Dickinson Circuit Court  
Family Division  
LC No. 14-000519-NA

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Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor children, MS and JM, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In July 2014, respondent's boyfriend at the time, James Moore, beat her severely while she lay on a bed, repeatedly punching her in the face with his fists until MS begged him to stop. Moore was arrested and jailed, and respondent and her children were taken to a domestic violence and sexual assault center. In mid-August, the domestic violence center ejected respondent because of her own aggressive behavior, and she took up residence in a local motel on a voucher that was to expire later that month. Recorded telephone calls from the county jail between respondent and Moore revealed that both blamed MS for Moore's arrest and incarceration. Moore could be heard to say, "bust her ass" and "lock her in the bathroom," to which respondent replied, "I already did." Respondent was heard speaking harshly to MS, telling her to stop crying or else CPS would take her away, and other such threats. The telephone calls also indicated that Moore and respondent planned to reunite and leave the area after Moore's release from jail.

On the basis of those developments, petitioner filed a petition with the trial court to take temporary custody of the children. Respondent was offered services in the areas of mental health, domestic violence, and parenting skills. She continued to maintain contact with Moore surreptitiously until the end of October 2014. Around this time, there arose suspicions that respondent was in a relationship with James Hood, a convicted felon with substance abuse issues who had been paroled in late September. In response to these suspicions, at the December 2014 dispositional review hearing, the foster-care specialist recommended that respondent "not associate with known drug users, convicted drug users, or known criminals," while the children's

lawyer-guardian ad litem asked the court to order respondent not to engage in any romantic or dating relationships. The court incorporated both these recommendations into the order that followed.

Respondent participated in home-based mental-health counseling sessions for herself and MS, obtained appropriate housing and a part-time job, and displayed good parenting skills during her supervised visits with the children. Her progress seemed such that, in January 2015, when the foster parents of respondent' two children asked the court to reconsider their placement because MS was "acting out sexually" toward a younger foster child, the court placed the children with respondent, but under petitioner's supervision.

In April 2015, the police were dispatched to respondent's apartment in response to allegations that, upon returning MS to respondent's care after a weekend visit, MS's father had stolen respondent's food debit card and money from her purse, an accusation that the father adamantly denied. After a drawn-out investigation at the apartment, respondent admitted that she had provided a false report. The responding officer's incident report indicated that Hood was present in the apartment, and that respondent explained his presence by asserting that he was her court-ordered caregiver's son, adding that when she called her caregiver about the theft, the caregiver was out of town and sent her son in her stead.

The following month, at a family team meeting, respondent agreed that it was not appropriate for Hood to be around her or her children, and said she would tell him not to come to her apartment anymore. But she did no such thing. Three days after the meeting, Hood overdosed on heroin at a friend's house and had to be transported to the hospital. Upon checking himself out of the hospital he went to respondent's apartment. When the police came looking for Hood at the request of his parole officer, MS, who was playing outside, told one of the officers that Hood was sick and sleeping in her mother's bedroom; however, when one officer inquired of respondent, she denied that Hood was in the apartment. Meanwhile, a second officer caught Hood trying to sneak out of the apartment. The court again removed the children from respondent's care, and petitioner filed an amended petition requesting termination in June 2015.

At the termination hearing, Hood's parole officer testified to Hood's extensive adult criminal record, his prior unsuccessful paroles, and his two drug relapses in 2015, but also stressed that Hood had done well since the second relapse, and that he had remained drug-free longer than during his previous paroles. The foster-care specialist stressed that respondent had been untruthful throughout the case, having used deception to continue her relationship with Moore, and now being less than forthcoming about Hood's arrest at her apartment and her pregnancy by Hood. Even after admitting that she and Hood were expecting a child, respondent continued to hedge on the nature of her relationship with Hood until she moved into his house in September 2015. Respondent admitted that she lied about her relationship with Hood, but insisted that she had intended to end the relationship but then found out she was pregnant and decided to make it work for the baby. She insisted that Hood had never used drugs at her apartment, that she had never left the children alone with him, and that she and Hood were in a good, supportive relationship.

With regard to her mental health counseling, respondent admitted that she had avoided addressing her own issues in previous counseling sessions by diverting the discussion to her

pending case or to issues with her children. In a rambling letter she wrote to the court that was read into evidence, respondent stressed that she now understood the importance of attending to her own mental health, and that she was committed to doing so. She apologized to the court for her dishonesty, and for violating the court's orders.

The trial court found that clear and convincing evidence established grounds for termination of respondent's parental rights, and that termination is in the children's best interests, and so issued the corresponding order from which respondent now appeals.

## II. STANDARD OF REVIEW

We review a trial court's findings that a ground for termination has been established, and that termination is in the best interests of the children, under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Only one statutory ground is required for termination. *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

## III. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that a statutory basis for terminating her parental rights was not established by clear and convincing evidence. We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Clear and convincing evidence is evidence that

"produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in an issue." [*In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).]

Under MCL 712A.19b(3)(c)(i), a court may terminate a parent's rights if the court finds that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

Under MCL 712A.19b(3)(g), the court may terminate a parent's rights where the court finds that the parent, "without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care

and custody within a reasonable time considering the child's age." A parent's failure to participate in, and benefit from, a service plan is evidence that the parent will not be able to provide a child proper care and custody. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

Under MCL 712A.19b(3)(j), the court may terminate a parent's rights if it finds that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Harm for this purpose includes emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

Concerning MCL 712A.19b(3)(c)(i), one of the "conditions that led to adjudication" in this case was respondent's pattern of making poor relationship decisions that placed her children at risk of harm. In the recent past, respondent had been in a relationship with JM's father, whom she believed molested MS. When respondent left JM's father, she met a man in a homeless shelter, married him in February 2014 so that, according to her own account, they could sleep together at the shelter, and then separated from him one month later. Respondent then entered into a relationship with Moore, whom she had met in the same homeless shelter. During this time, respondent's children were exposed to homelessness, domestic violence, and, in the case of MS, possible sexual abuse.

The record shows that, after Moore's arrest and incarceration in the county jail, respondent maintained contact with him until late October 2014. By mid-October, respondent had become involved with James Hood, a recently paroled felon with a lengthy criminal record including a substantial history of substance abuse. Although respondent's association with Hood violated the trial court's order prohibiting respondent from associating with substance abusers or entering into any dating relationships, the court correctly pointed out that "[i]gnoring the order in and of itself certainly is not grounds for termination." The point of the order, as the court explained, was to protect respondent from herself, in other words to shield her from her established pattern of making impulsive relationship choices that resulted in an unfit environment for her children. By cultivating a romance with Hood while only recently engaged in services to address her own substance-abuse and mental-health issues, and while Hood had yet to establish his sobriety outside the confines of incarceration, respondent simply continued her pattern. Further, the record shows that respondent sought to mislead the court and the foster-care specialist by prevaricating about the relationship until she actually moved in with Hood shortly before the termination hearing. For these reasons, we conclude that the trial court did not clearly err in determining on clear and convincing evidence that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(c)(i).

Concerning MCL 712A.19b(3)(g), respondent requested and received home-based mental health counseling through Northpointe Behavioral Health. Parent-agency treatment plans for January 2015 and March 2015, respectively, reported respondent's mental health progress as "poor" and "partial," and the June 2015 treatment plan reported respondent's progress toward overall barrier reduction as "poor," and stated, among other things, that she had failed to benefit from mental-health services. Respondent admitted at the termination hearing that, while she was supposed to be undergoing mental health counseling, she had avoided addressing her own issues by redirecting the discussion to her pending case or to issues with her children. She asserted that she now understood the importance of attending to her own mental health, and that she was

committed to making progress. Nevertheless, she declined to begin her course in Dialectical Behavioral Therapy as planned. In light of the evaluations of respondent's progress in her parent-agency treatment plans, and her own admissions at the termination hearing, and considering the trial court's opportunity to judge the credibility of the witnesses, MCR 2.613(C), we are not left with a definite and firm conviction that the trial court's conclusion that subsection (3)(g) provided a statutory basis for termination of respondent's parental rights was clearly erroneous. See *In re Mason*, 486 Mich at 152; *In re White*, 303 Mich App at 710.

With regard to MCL 712A.19b(3)(j), given respondent's perpetuation of a pattern of forming relationships that had created an unfit environment for her children, which had placed them at risk of physical or emotional harm, and considering respondent's failure to benefit from her service plan, we are not definitely and firmly convinced that the trial court's finding that clear and convincing evidence supported termination under (3)(j) was clearly erroneous.

#### IV. BEST INTERESTS

Respondent contends that the trial court erred when it determined that termination of her parental rights was in the children's best interests. We disagree.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The best-interest question is decided on the basis of the preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83-90; 836 NW2d 182 (2013).

The trial court found that respondent's bond with her children, and her ability to give them love and affection, weighed against termination. However, the trial court weighed in favor of termination respondent's inability to provide the children with guidance, her lack of capacity and disposition to provide for their material and medical needs on a consistent basis, and the children's need for stability and a satisfactory environment. Central to the court's decision were respondent's mental-health issues, including reluctance to engage in meaningful mental-health counseling. Regarding the latter, the court stressed respondent's pattern of selective and partial engagement with counseling, indicating that respondent's mental-health issues required more consistent and systematic effort than she had been willing or able to put forth. Additionally, the court emphasized the children's need for safety, stability, and permanence, noting that they had been on a "roller coaster" for the past year or more, and that both were at an age where they needed a safe and stable environment in which to recover from the trauma they had experienced and move forward.

We conclude that the court did not clearly err in determining that termination of respondent's parental rights was in the children's best interests. The parent-child bonds, and respondent's ability to provide love and affection, did not outweigh that certain patterns in respondent's past behaviors had subjected the children to considerable trauma and, in MS's case,

possible sexual abuse, or that, because respondent had neither satisfactorily renounced these patterns nor honestly participated in the mental-health services offered, there was no reason to believe that the past would not repeat itself. In light of the evidence, and considering the trial court's opportunity to judge the credibility of the witnesses, MCR 2.613(C), the trial court's determination that termination of respondent's parental rights was in the best interest of the children was not clearly erroneous. See *In re Sours Minors*, 456 Mich at 633.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ David H. Sawyer  
/s/ Michael J. Kelly